tens of thousands" of them in the defendant's possession notwithstanding, must be produced for its proper ascertainment because they are relevant to it. The complexity or immensity of the task should not be a deterrence. Sooner or later, it will have to be undertaken and it should be done as a pre-trial measure rather than at the trial itself.

For these reasons, we dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Mah-Kok & Din; Skrine & Co.*

PUBLIC PROSECUTOR v. LIM JOO SOON

[F.C. (Wan Suleiman, Syed Othman & Ibrahim Manan F.JJ.) October 6, 1980]

Kuala Lumpur — Federal Court Criminal Application No. 16 of 1979]

Criminal Law and Procedure — Appeal from subordinate court — Application by Public Prosecutor to reserve question of law of public interest for decision of Federal Court — Application dismissed by judge of High Court — Whether question one of law of public interest — Whether High Court bound to refer question on application of Public Prosecutor — Courts of Judicature Act, 1964, s. 66(1).

In this case the Public Prosecutor had applied for certain questions which had arisen in an appeal from a subordinate court to be referred to the Federal Court as they were questions of law in the public interest. The learned Judge refused the application.

Held: where an application is made by the Public Prosecutor the court has no discretion to decide on whether the question of law is of public interest. In such a case on the clear purport of section 66(1) of the Courts of Judicature Act, 1964, it must be taken that any question posed by the Public Prosecutor is of public interest, unless of course it can be shown that the question is indeed of his own personal interest and no one else.

Cases referred to:-

(1) *Public Prosecutor* v. *Ismail Ishak & 59 Ors.* unreported.

(2) *Tan Yin Yen* v. *Public Prosecutor* [1973] 2 M.L.J. 143.

FEDERAL COURT.

Sharkawi bin Alis (Deputy Public Prosecutor) for the applicant.

Raja Abdul Aziz Addruse for the respondent.

Cur. Adv. Vult.

Ibrahim Manan F.J.: This is an application by the Public Prosecutor (applicant) for an order that:—

"(1) the Honourable Judge do reserve for the decision of the Federal Court the following questions of law:

(a) Whether it is competent in law for the learned judge to determine the classification of any goods where a certificate classifying such goods has been issued by the Director-General of Customs under section 22 of the Customs Act, 1967.

(b) If so, whether it is competent in law for the learned judge to determine the classification of such goods when an appeal against the decision of the Director General of Customs classifying such goods under section 22 of the Customs Act, 1967, is pending before the Honourable Minister of Finance under section 143 of the said Act

as questions of law of public interest, which have arisen in the course of the abovementioned Criminal Appeal and the determination of which will affect the event of the appeal.

(2) the time for this application made pursuant to section 66(2) be extended to such longer time as the Federal Court may deem fit.

(3) the Order made by the Honourable Judge on 30th August, 1979 be set aside."

Section 66(1) of the Courts of Judicature Act, 1964 reads as follows:—

"When an appeal from a decision of a subordinate court in a criminal matter, other than a decision of a President of a Sessions Court conferred with special jurisdiction under subsection (3) of section 63 of the Subordinate Courts Act, 1948, has been determined by the High Court the judge may on the application of any party and shall on the application of the Public Prosecutor reserve for the decision of the Federal Court any question of law of public interest which has arisen in the course of the appeal and the determination of which by the judge has affected the event of the appeal."

The only issue raised in this application is whether the two questions are questions "of law of public interest". It was the contention of the learned Deputy Public Prosecutor that since the application was made by the Public Prosecutor they were *ipso facto* such. The learned judge disagreed with him and though no written judgment was given by him for dismissing the application his reasons for doing so could, we believe, be gathered from his earlier judgment in *Public Prosecutor* v. *Ismail Ishak & 59 Ors.* (unreported) given on December 11, 1975. In that case the learned judge had also disagreed with the same contention made by the learned Deputy Public Prosecutor and in the course of his judgment in that case he said:

"... It seems to me that section 66(1) of the Courts of Judicature Act does not give the Public Prosecutor the automatic right to have all questions by him referred to the Federal Court or to put it in another way, a judge of the High Court is not bound to refer any question to the Federal Court merely because the application is made by the Public Prosecutor. He must first decide on the merits of the application itself.

I find support for this view from a passage by Suffian Ag. C.J. (as he then was) in *Tan Yin Yen's*[2] case, F.C. where his Lordship said:

'It is to be observed that questions of law which may be referred to us under section 66 should not be questions that are of personal interest only to the accused *or the Public Prosecutor*, but should be questions that are of public interest, and it seems to us better if the High Court were to exercise *their discretion* under section 66 *sparingly*, so that references are not used as an indirect way of appealing against matters that under the law have been finally determined by the High Court.' (The italics are mine.)"

With respect we do not agree with him. We are of the view that the word "shall" in the said section 66(1) in respect of any application by the Public Prosecutor, should be given effect to, and that the position here is the same as it is under the English Criminal Appeal Act, 1907. The Public Prosecutor's application coming as it is from such an august officer of the law removes from the discretion of the court the right to decide on whether the question of law is of public interest. When the Public Prosecutor applies for reference, on the clear purport of the said section 66(1), it must be taken that any question posed by him is of public interest, unless of course it can be shown that the question is indeed of his own personal interest and no one else.

We would therefore allow this application. As to prayer 2 we would extend the time to 2 weeks from to-day.

Application allowed.

Solicitors: *Rithaudeen & Aziz.*